

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MARTEK BIOSCIENCES)	
CORPORATION,)	
)	
Plaintiff,)	
)	C.A. No. 03-896-GMS
v.)	
)	
NUTRINOVA INC., NUTRINOVA)	
NUTRITION SPECIALTIES & FOOD)	
INGREDIENTS GmbH, and)	
LONZA LTD.,)	
)	
Defendants.)	

JOINT MOTION TO DISMISS WITH PREJUDICE

WHEREAS, plaintiff Martek Biosciences Corporation (“Martek,” which has been succeeded by, and is now known as, DSM Nutritional Products, LLC) brought this action against defendants Nutrinova Inc., Nutrinova Nutrition Specialties & Food Ingredients GmbH, and Lonza Ltd. (collectively, “Lonza”), as well as Twinlab Corporation (“Twinlab”) and Ideasphere Inc. (“Ideasphere”);

WHEREAS, Martek asserted claims for infringement of U.S. Patent Nos. 6,451, 900 (the “900 patent”), 6,451,567 (the “567 patent”), 5,340,594 (the “594 patent”), 6,410,281 (the “281 patent”) and 5,698,244 (the “244 patent”) (collectively, the “patents-in-suit”);

WHEREAS, Lonza filed declaratory judgment counterclaims with respect to the patents-in-suit and additional patents;

WHEREAS, Martek and Lonza entered into a covenant-not-to-sue with respect to said additional patents except for U.S. Patent No. 5,340,742 (the “742 patent”), and the declaratory judgment counterclaims with respect thereto were dismissed without prejudice;

WHEREAS, Martek settled with Twinlab and Ideasphere, and Martek's claims against Twinlab and Ideasphere were dismissed with prejudice;

WHEREAS, Martek and Lonza stipulated to non-infringement of the '244 and '742 patents based on the Court's claim construction;

WHEREAS, Martek and Lonza entered into a covenant-not-to-sue on the '900 patent;

WHEREAS, Martek and Lonza went to trial on the '567, '594 and '281 patents, and a jury verdict was returned in favor of Martek on those patents;

WHEREAS, appeals were pursued by Martek and Lonza with respect to the '567, '594, '281 and '244 patents;

WHEREAS, the United States Court of Appeals for the Federal Circuit affirmed the jury verdict in favor of Martek on the '567, '594 and '281 patents, reversed the District Court's claim construction on the '244 patent, and remanded for further proceedings with respect to the '244 patent; and

WHEREAS, the parties have reached a settlement with respect to the '244 patent and all remaining claims in this action;

NOW THEREFORE:

Pursuant to Federal Rule of Civil Procedure 41(a)(2) and a confidential Settlement Agreement, Martek and Lonza hereby jointly move the Court to dismiss with prejudice all remaining claims asserted by Martek against Lonza and all remaining claims asserted by Lonza against Martek in this case. Martek and Lonza agree that each party shall bear their own fees and expenses.

A proposed order is being filed herewith.

ASHBY & GEDDES

/s/ John G. Day

John G. Day (#2403)
Tiffany Geyer Lydon (#3950)
Andrew C. Mayo (#5207)
500 Delaware Avenue, 8th Floor
P.O. Box 1150
Wilmington, DE 19899
(302) 654-1888
jday@ashby-geddes.com
tlydon@ashby-geddes.com
amayo@ashby-geddes.com

*Attorneys for Plaintiff
Martek Biosciences Corporation*

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YOUNG, CONAWAY, STARGATT & TAYLOR LLP

/s/ James M. Lennon

James M. Lennon (#4570)
Rodney Square
1000 North King Street
Wilmington, DE 19801
(302) 571-5009
jlennon@ycst.com

*Attorneys for Defendants
Nutrinova Inc., Nutrinova Nutrition Sepcialties and Food
Ingredients GmbH, and Lonza Ltd.*